

DEPARTMENT OF BOATING AND WATERWAYS

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INFORMATION LETTER

July 1, 1998

TO: *Licensed Brokers and Salespersons*

FROM: *Yacht and Ship Broker Licensing Unit*

SUBJECTS: *1. Original Signatures On Documents 2. Closing Statements. 3. Deposit Checks Held Uncashed. 4. Broker's Surety Bond. 5. Broker's Change Of Address. 6. Department's Change Of Address And Telephone Numbers. 7. Broker-Salesman Relationship Agreement. 8. State Board Of Equalization. 9. CYBA/Department Effort To Create A Brochure For The Boat-Buying Public. 10. License Renewal Forms.*

I ORIGINAL SIGNATURES ON DOCUMENTS.

Beginning July 1, 1998, Brokers are requested to retain originally signed documents bearing signatures of buyers and sellers on Listing Agreements and Offers to Purchase and Sales Agreements. Brokers will also retain the Broker-Salesperson Relationship Agreement bearing the original signatures of the Broker and the Salesperson.

2 CLOSING STATEMENTS.

Closing Statement should be signed by the Broker OR a licensed Yacht and Ship Salesperson, employed and designated by the Broker, when the Closing Statement is issued in the Broker's absence. Section 715 of the Yacht and Ship Brokers Act (Act) does not require that a buyer or seller sign a Closing Statement, although some Brokers have their clients sign this document, which is permissible but not required. The concern of the Department is that this document should be signed by the Broker or a licensed Salesperson designated by the Broker, and that the Broker keep an original with the Broker/Sales person's original signature on file for a period of four years pursuant to Section 7620 of Title 14 of the California Code of Regulations.

3. DEPOSIT CHECKS HELD UNCASHED:

In making routine site visits to offices to inspect records, the Department has found that many Brokers are holding deposit checks uncashed. Section 714 of the Act requires a Broker who accepts funds from others in connection with any transaction to place such funds into a neutral escrow depository, or a trust account, as soon as possible (in the Department's opinion, this means within 48 hours, unless circumstances beyond the Broker's control dictate otherwise). This avoids the appearance of commingling, which is illegal, and is explained in Section 714, and 732

(e) of the Act. The only legal exception to holding a deposit check uncashed is specified in Section 7604 of Title 14 of the California Code of Regulations, which reads as follows: “(3) (e) a check received from the offeror may be held uncashed by the broker until acceptance of the offer if (1) the check by its terms is not negotiable by the broker or if the offeror has given written instructions that the check shall not be deposited nor cashed until acceptance of the offer and (2) the offeree is informed that the check is being so held before or at the time the offer is presented for acceptance.” To ensure the Department that the seller does not object that a Broker is holding a buyer's deposit check uncashed, the Broker should have written authorization from the seller and keep it on file in the Broker's office.

4 BROKER'S SURETY BOND:

The Department will not accept a copy/fax of a bond or a copy/fax of a bond rider. Both of these documents must be the originals, and the bond must be notarized. There is no exception to this policy. This policy has always been in effect, yet the Department continues to receive photocopies of bonds and bond riders. This only delays the issuance of a Broker's license.

5 BROKER'S CHANGE OF ADDRESS:

Pursuant to Section 735 (b) of the Act, Brokers are required to immediately mail all original Broker and Salesperson licenses to the Department (not photo copies), whenever the brokerage changes its address. The Broker is required to notify the Department of the new address so the Department can reissue licenses that reflect the address of the new location. The same is true for salespersons/brokers who leave a brokerage; every invalid license must be returned to the Department.

6 DEPARTMENT'S CHANGE OF ADDRESS AND TELEPHONE NUMBERS:

The Department will be relocating to a larger building sometime during the summer (the exact date is not yet certain). All of our current telephone numbers will change and we will provide you with our new telephone numbers and the new address prior to our move. The Department's Internet address of <http://www.dbw.ca.gov> will remain unchanged. Our toll-free number of 1-888-326-2822 will also remain the same.

7 BROKER-SALESMAN RELATIONSHIP AGREEMENT:

On routine brokerage visits during the past two months, we found six brokers who did not have such agreements in place with their licensed salespersons. The Department provided these Brokers with cautionary letters (usually, the penalty is \$1,000 whenever a complaint has been filed and a violation has occurred). While the Department attempts to educate Brokers about their lawful compliance requirements during routine brokerage visits, this particular violation is going to get very expensive in the future. It is occurring often and by Brokers who have been licensed long enough to know better. Moreover, we mentioned the Broker-Salesman Relationship Agreement in our last Information Letter of May 15, 1997, and in previous Information Letters. This is not a new topic or a new regulation. The Department urges you to protect your business interests and avoid a maximum \$1,500 penalty by complying with Section 7619 of Title 14 of the California Code of Regulations (CCR), which reads as follows:

“Every broker shall have a written agreement with each of his salesmen, whether licensed as a salesman or as a broker under a broker-salesman arrangement. The agreement shall be dated and signed by the parties and shall cover the material aspects of the relationship between the parties.

Signed copies of the agreement shall be retained by the parties thereto, and shall be available for inspection by the department or its designated representative on request.”

Regarding these agreements, the Department does not settle commission disputes; when complaints are made by licensed salespersons that do not have such an agreement with their Broker, we refer the matter in dispute to the Labor Commission for resolution. At the same time, if we find that a Broker has violated Section 7619 of Title 14 of the CCR, the average penalty assessment of \$1,000 is based on two factors: (a) The expense to two separate regulatory agencies who are involved in the matter, (the Department investigates the matter) and (b) the resolution process undertaken by the Labor Commission. We consider this a waste of taxpayer resources and money. Brokers are responsible for having these agreements in place on the day the salesperson begins work. The Salesperson license number must also be recorded on the Broker-Salesman Relationship Agreement, pursuant to the requirement that such an agreement be in place. The Department will no longer provide cautionary letters about this issue. Civil penalties of \$1,500 will be in order.

8 STATE BOARD OF EQUALIZATION:

The Board issued an addendum to “Publication 40”, which became effective in January 1998. The addendum reflects changes in law and regulations, or Board procedures that have occurred since the April 1995 publication of the above referenced pamphlet. Page 6 reads as follows:

“Brokerage sales,” Insert after introductory paragraph: change in liability for use tax. The text reads: If the broker collects the use tax from the purchaser and provides a receipt, the broker, not the purchaser is liable for the use tax amount paid and must remit that amount to the Board (for documented vessels) or to the DMV (for undocumented vessels). If the Board later determines that additional use tax is due, the purchaser is liable for the additional tax. To order a copy of Publication 40 from the Board, call 11-800-400-7115 or use the internet address at:

<http://www.boe.ca.gov>

9 CYBA/DEPARTMENT EFFORT TO CREATE A BROCHURE FOR THE BOAT BUYING

PUBLIC: *The brochure that was first announced in our last Information Letter of May 15, 1997, is very close to going to print. Brokers are primarily responsible for the language and layout, which the Department believes is going to be very impressive. Broker Sherry Cameron provided most of the suggestions, and is coordinating the graphics on behalf of the CYBA. After Sherry and I agreed on the precise language, it was given to a Cal Boating Manager to read. The manager’s first response was: “It put me to sleep!” Fair enough. We then farmed the project out to professional artists; Somerset Words and Pictures and Sacramento Media Services. Expect the*

brochure late this summer (after we move-so our new telephone numbers can be included), then let us know how many copies you want for your clients.

10 **LICENSE RENEWAL FORMS:**

Incomplete renewal forms and renewal forms without the Brokers signature will not be accepted.

The Department encourages Brokers and Salespersons to call the Department whenever we can be of assistance. We will provide Brokers with clarifying information whenever we can. If you have any questions about this Information Letter, please contact Corina Dugger at (916) 322- 1835 or Dave Trillo at (916) 445-5685.